

**CITY OF GOODYEAR  
CITY COUNCIL ACTION FORM**

**SUBJECT:** Agreement with Sarival 155 L.L.L.P., to dedicate 2.29 acres of land generally located at the southwest corner of Wildflower Dr. and Yuma Rd in the proposed Pueblo Verde P.A.D., for the site of a new fire station.

**STAFF PRESENTER:** Harvey Krauss,  
Community Development Director  
**COMPANY**  
**CONTACT:** Francis Slavin, Attorney for Bruce Hilby and Richard Wilson of Sarival 155 LLLP

**RECOMMENDATION:**

Council authorize the City Manager to enter into an Agreement with Sarival 155, LLLP for the dedication of 2.29 acres of land for a fire and emergency medical facility at the southwest corner of Yuma Road and Wildflower Drive in the proposed Pueblo Verde Planned Area Development.

**COMMUNITY BENEFIT:**

1. The dedication of this 2.29 acre site will provide land needed for a fire and emergency medical facility to meet the needs of properties in Canyon Trails and other developments in the general vicinity.
2. The acceptance of this land dedication and construction of a fire and emergency medical facility on the site will fulfill a requirement of the Canyon Trails Development Agreement.

**DISCUSSION:**

Section 9 C. (2) of the Canyon Trails Development Agreement provides for the Owners (Bruce Hilby, Dick Wilson and others) to dedicate a site for a permanent fire and emergency medical facility of not less than 2.0 acres and not greater than 4.0 acres. The Agreement provided for the permanent fire station site to be located within the Canyon Trails master planned community, or the site could be dedicated on property outside of the Canyon Trails development. City Staff has reached an agreement with the Owners of Canyon Trails on the dedication of a 2.29 acre site in the proposed Pueblo Verde development generally located at the southeast corner of Yuma Road and Sarival Avenue. Mr. Hilby and Mr. Wilson are in the process of selling approximately 134 acres of land within Pueblo Verde to Beazer Homes. The commercial tract at the corner of Yuma Road and Sarival Avenue will be sold separately to another developer.

With Council approval of the proposed Pueblo Verde P.A.D., the 2.29 acre site will be zoned for public purposes and the Developer of Pueblo Verde, Beazer Homes, will install the infrastructure needed for development of the fire and emergency medical facility. The Preliminary P.A.D. for Pueblo Verde is pending before the City Council. The City is responsible for constructing and equipping the fire station to serve the Canyon Trails development, as well as other properties in the general vicinity.

In accordance with the Development Agreement, the City will provide the Owners with credits toward the required fire and emergency medical facilities development fee. With the agreed upon value of \$42,500 per acre times 2.29 acres, the credits available for this land dedication will be \$97,325. Credits will also be provided for the various transactional costs required for this dedication (i.e. escrow fees, title insurance and survey of property). To assist the City with the operational and maintenance costs of this new facility, the Developer of Canyon Trails agreed to advance the City \$2.5 million dollars, payable in five annual payments of \$500,000.

The Fire Department will be able to serve the Pueblo Verde development, and those portions of Canyon Trails that are currently zoned and a portion of the "Additional Property" designated in the Development as future phases of Canyon Trails. Attached is a map of the service area for the proposed Pueblo Verde fire station site.

The design of the new fire station was budgeted in fiscal year 2003-2004. The Fire Chief will initiate the design phase for the new facility as soon as the City acquires this property.

#### **Community Development Impact**

The Community Development Staff will process the infrastructure plans for serving this fire station site, as well as approving the building plans and issuing the permits for the construction of the new facility.

#### **Fire Impact**

The Fire Department will obtain a fire station site that is located near new development in order to meet a 4-minute response time to residents and businesses within the service area of this new facility.

#### **FISCAL IMPACT**


City Staff has agreed to a land value of \$42,500 per acre. Thus, the 2.29 acre land dedication is valued at \$97,325. As per the Canyon Trails Development Agreement, the Developer is entitled to fire and emergency medical facilities fee credits in the amount of \$97,325, plus costs associated with the transfer of title to the City, such as escrow fees, title insurance and the survey of the property. These credits will be applied to the required development fees for those properties developing within Pueblo Verde, a mixed use development at the southeast corner of Sarival Avenue and Yuma Road.


The Developer of Canyon Trails (Continental Homes) agreed to advance the City \$2.5 million dollars for fire and police operational and maintenance expenses, payable in five annual payments of \$500,000. Continental Homes is current on its required O & M payments to the City.

**REVIEWED BY:**

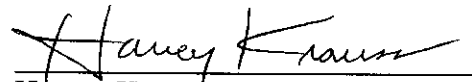
  
Grant Anderson – Deputy City Manager

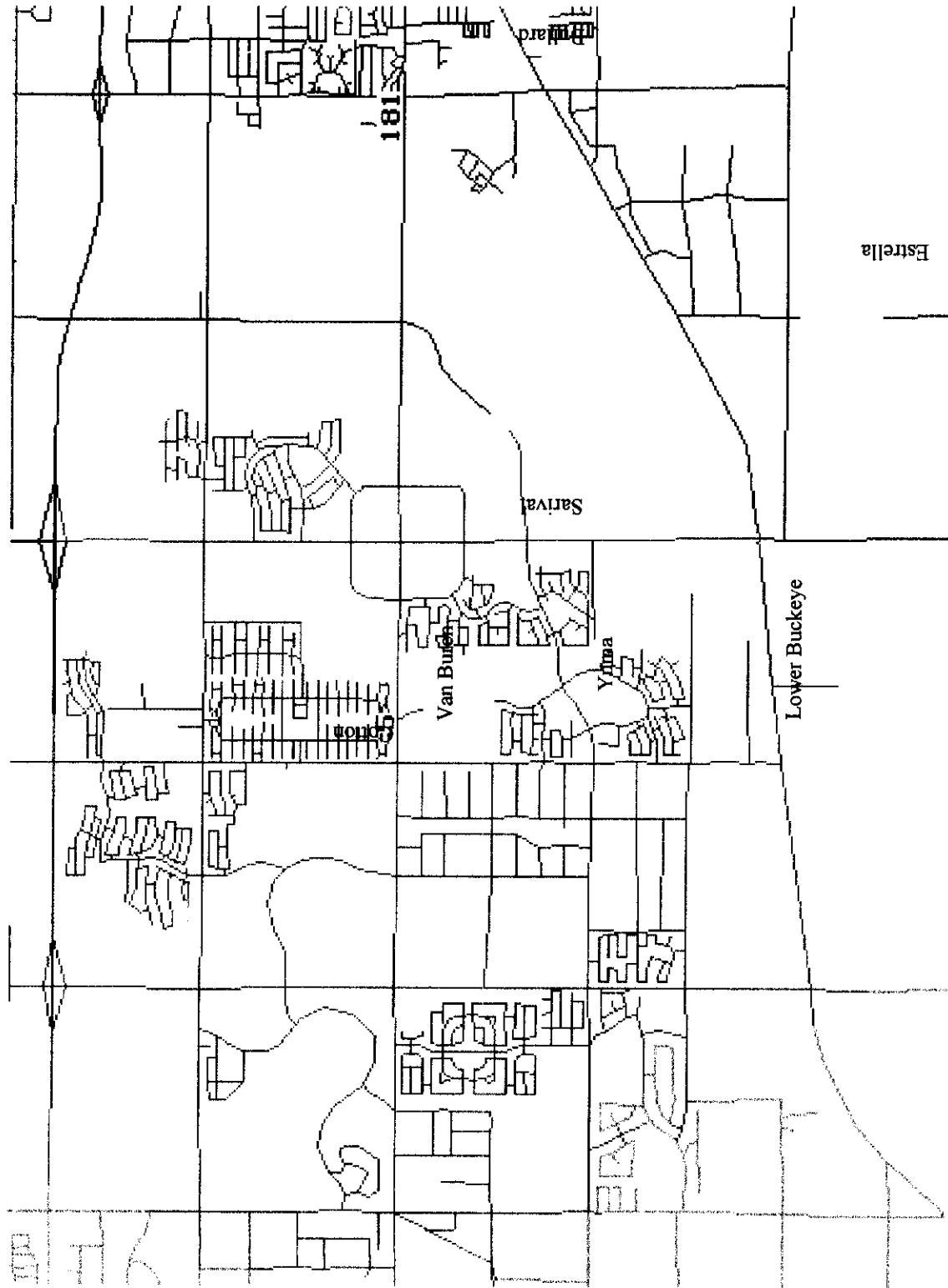
  
Jim Oeser – City Attorney

  
Larry Price – Finance Director

  
Stephen Cleveland – City Manager

**PREPARED BY:**

  
Harvey Krauss – Com. Dev. Director



Litchfield

Estrella

Lower Buckeye

Van Buren

Yuma

Sariva

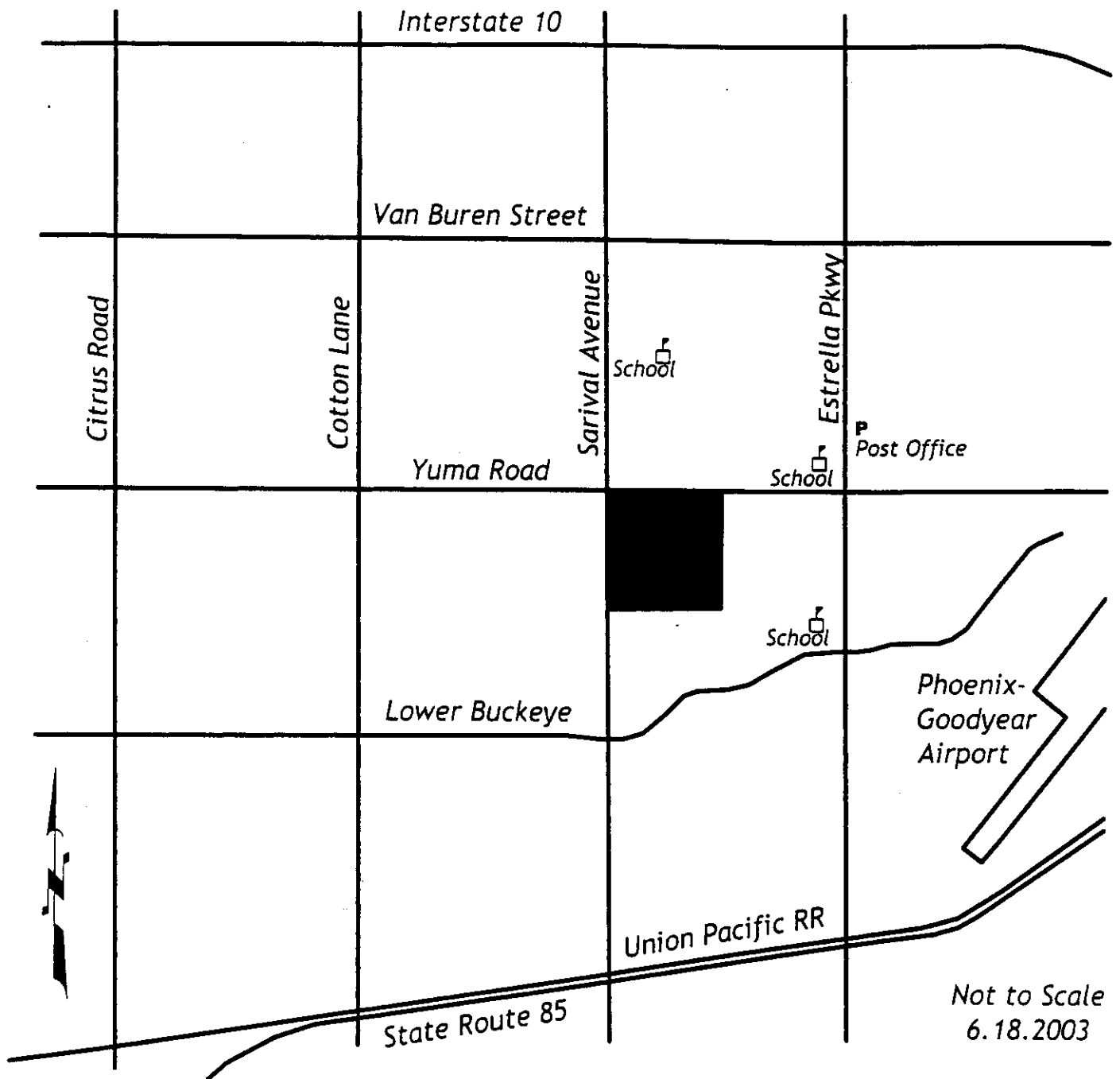
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Yost and Gardner Engineers  
2619 North Third Street  
Phoenix, AZ 85004  
Job Number 8234  
W.O. Number 45117  
6/13/03  
PTH4511.pcx

Response Area  
3.5 Minute Travel  
area by station

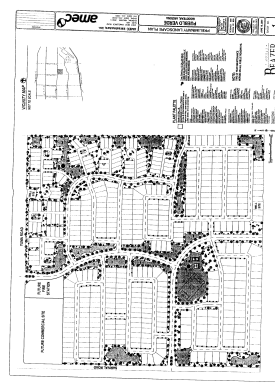
Pueblo Verde  
Fire Response Study

# VICINITY MAP



**PUEBLO VERDE**  
GOODYEAR, ARIZONA

BEAZER



## AGREEMENT TO DEDICATE LAND FOR PUBLIC PURPOSE

This Agreement to Dedicate Land for Public Purpose ("**Agreement**") is made effective as of the Agreement Date by and between SARIVAL 155, L.L.P. an Arizona limited liability limited partnership ("**Grantor**"), and CITY OF GOODYEAR, an Arizona municipal corporation ("**Grantee**").

### RECITALS

A. Grantor is the owner of that certain unimproved real property located in the City of Goodyear, Maricopa County, Arizona, comprised of 2.29 Net Acres, as more particularly described in **Exhibit "A"** attached hereto and by this reference incorporated herein (the "**Property**"). Grantor and Grantee mutually covenant and agree that Net Acres, with respect to the Property, means the total number of acres, including any fraction thereof, within the boundaries of the Property, reduced by the number of acres, including any fraction thereof, within the boundaries of the Property subject to existing road dedications and public rights-of-way for roads and roadway easements.

B. Grantor desires to dedicate the Property to Grantee and Grantee desires to accept said dedication of the Property by Grantor on the terms and conditions hereinafter set forth.

C. On or about September 11, 2002, Grantor entered into a Purchase Agreement to sell approximately 134 acres of land contiguous to the Property to be developed as and for single-family residential use. Under such agreement, the buyer therein has agreed to purchase from Grantor the development fee credits given to Grantor in respect of the dedication of the Property to Grantee upon purchase of the land contiguous to the Property.

NOW, THEREFORE, in consideration of the premises, the terms, conditions and covenants contained herein and for other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### AGREEMENT

1. **Definitions.** As used in this Agreement, the terms below shall have the following meanings unless the context requires otherwise.

a. "**Agreement Date**". The date this Agreement has been signed by Grantor and Grantee as indicated by the latest date set forth below the parties' signatures hereon.

b. "**Escrow Agent**". First American Title Insurance Company, 4801 East Washington Street, Suite 110, Phoenix, AZ 85034, Carol Peterson, Escrow Officer, under

Escrow No. \_\_\_\_\_, or such other escrow agent as Grantor and Grantee shall hereafter appoint in writing.

c. **"Feasibility Period"**. The period which commences on the Agreement Date and terminates at 5:00 p.m., M.S.T., on the sixtieth (60<sup>th</sup>) day from and after the Agreement Date.

d. **"Special Warranty Deed"**. The instrument of conveyance in the form set forth in **Exhibit "B"**.

e. **"Title Insurer"**. First American Title Insurance Company.

2. **Agreement to Dedicate Land**. At the Closing, subject to the terms, covenants and conditions of this Agreement, Grantor shall transfer and convey to Grantee all of Grantor's right, title and interest in and to the Property. The Closing shall occur on or before the Closing Date; provided, however, that Grantor's obligation to consummate the Closing, in addition to being subject to the conditions precedent set forth in **Paragraph 4** of this Agreement, are subject to the further condition that the Closing may not occur at any time when Grantee is in default of any of its obligations under this Agreement.

3. **Agreed upon Value of the Property; Fire and Emergency Medical Facilities Development Fee Credits**. The agreed upon value of the Property is \$42,500.00 per Net Acre, which is based upon the fair market value of the land owned by Grantor determined by the price per acre set forth in the Purchase Agreement which is the subject of the pending escrow described in Recital B. above. Grantee agrees that, in consideration of the transfer and dedication of the Property to Grantee, Grantee shall issue to Grantor, immediately upon transfer of title to (dedication of) the Property to Grantee and as part of the Closing of such dedication, as may be requested by Grantor, one or more of Grantee's Certificate(s) for transferable (solely to any owner of real property located within that certain project in the City commonly known as Pueblo Verde), irrevocable fire and emergency medical facilities development fee credits in an aggregate amount equal to \$42,500.000 per Net Acre multiplied the total number of Net Acres in the Property (including any fraction thereof), as determined by the Survey (defined below).

Since the Survey indicates that the Property contains 2.29 Net Acres and Grantee has already approved the Survey prior to the effective date of this Agreement, then Grantor shall be entitled to fire and emergency medical facilities development fee credits in the amount of \$97,325.00 (\$42,500.00/Net Ac. x 2.29 Net Ac.) in respect of the dedication of the Property to the Grantee. To this sum there shall be added the aggregate amount of certain transactional costs incurred by Grantor in connection with the dedication of the Property to Grantee, as provided herein, such as escrow fees payable to the escrow agent, the premium for an owner's policy of title insurance in the amount of the agreed upon value of the Property, the cost of the Survey, the cost to either re-certify Grantor's existing ESA for the Property in



favor of Grantee, or to obtain a new ESA for the benefit of Grantee, the exact amounts for each of which shall be determined at the time of the dedication of the Property to Grantee. The Grantee's Certificate for fire and emergency medical facilities development fee credits to be issued to Grantor at the time of the conveyance of the Property to the Grantee shall be in the aggregate sum of the agreed upon value of the Property (\$97,325.00) plus the total amount of all of the transactional costs enumerated above.

4. **Conditions Precedent.** The obligation of Grantee to accept the dedication of the Property from Grantor and to close the transaction contemplated hereby is subject to satisfaction of each of the following conditions precedent (collectively the "**Conditions**") within the time periods specified.

a. **Title Insurance Commitment.**

i. **Initial Issuance.** Within ten (10) days after the Agreement Date, Grantor shall cause Title Insurer to deliver to Grantee a current title insurance commitment (the "**Commitment**") to issue to Grantee as of the time and date of recordation of the Special Warranty Deed, an ALTA extended coverage owner's title insurance policy (the "**Title Policy**"), in the aggregate amount of the value of the Property agreed upon between Grantee and Grantor. Grantee shall be responsible for all premiums for an owner's policy of title insurance, including any additional premiums for extended coverage or any endorsements desired by Grantee. In addition to the usual printed exclusions and stipulations, the Title Policy may contain only exceptions approved or deemed approved by Grantee as provided in this Agreement, all Survey matters approved by Grantee under **Paragraph 4(b)**, and all matters resulting from the acts or omissions of Grantee or its agents (collectively, the "**Permitted Exceptions**").

ii. **Grantee Objection and Resolution.** Grantee shall have ten business days following receipt of the later to be received of the Commitment and the Survey to notify Grantor and Escrow Agent of any objections to matters shown in the Commitment and five (5) business days following receipt of any amendment to the Commitment to notify Grantor and Escrow Agent of any objections to matters shown in the amendment. Grantor shall have five (5) business days after receipt of Grantee's written notice of objections to provide written notice to Grantee as to whether or not Grantor will elect to attempt to cure any of such objections. Grantee shall have five (5) business days after receipt of notice of Grantor's election not to cure such objections within which to either waive the matters previously objected to and close the transaction or terminate this Agreement. Grantee shall have no right to object to any matter described in an Amended Commitment which has previously been approved or waived by Grantee or as to which Grantee has no right of approval or objection as provided herein. If Grantor fails to notify Grantee within the requisite 5-day period of Grantor's willingness to cure, Grantor shall be conclusively deemed to have elected not to cure Grantee's objections, in which event Grantee must make one of the above described elections within ten (10) days following notice of its initial written objections to

Grantor. If Grantor elects to cure the matters objected to by Grantee, then such cure must be completed to Grantee's reasonable satisfaction, if at all, within thirty days following Grantor's election to cure. If Grantor fails to cure such matters to Grantee's reasonable satisfaction within thirty days following Grantor's election to cure, Grantor shall not be in breach of this Agreement, but Grantee may elect to either terminate this Agreement by written notice to Grantor and Escrow Agent delivered by 5:00 p.m. Phoenix time on the fifth business day after Grantor's failure, and upon timely receipt of such notice, this Agreement shall terminate, as provided in **Paragraph 17** of this Agreement, or Grantee and Grantor, acting in good faith, may mutually elect in writing to extend such cure period or Grantee may waive the matter to which Grantee previously made objection and which Grantor was unable to cure and proceed to Close Escrow on the Property. If Grantor does not elect, or is deemed not to have elected, to cure the matters objected to by Grantee, and if Grantee fails to timely notify Grantor of Grantee's election to waive the matters objected to by Grantee, then Grantee shall be deemed to have elected to terminate the Agreement on the date which is ten (10) days after the date Grantor elects or is deemed to have elected not to cure Grantee's objections.

iii. **Closing Date Extension.** If necessary, the Closing Date (as defined below) shall be extended for a period equal to the number of days actually used by Grantee and/or Grantor, not to exceed the full time periods (if required by Grantee and/or Grantor) set forth above, for: (A) review of an Amended Commitment; (B) the making of objections to any additional matters as to which objection may be made; (C) making an election to attempt to cure an objection or not; and/or (D) electing whether to waive the matters objected to or to terminate this Agreement.

b. **Survey.** Prior to the Opening of Escrow, Grantor has provided Grantee with a copy of the existing ALTA/ACSM Land Title Survey for the Property dated September 18, 2003, prepared by Arizona Surveying and Mapping, Job No. P03-132 (the "**Survey**"). Upon Grantee's request, and at Grantor's sole cost and expense, Grantor shall cause the Survey to be re-certified to Grantee, Escrow Agent and Title Insurer. The Survey states to the nearest one hundredth the number of Net Acres comprising the Property (2.29 Net Acres), and has been prepared to satisfy Title Insurer's requirements respecting the issuance of extended coverage title insurance. Prior to the effective date of this Agreement, Grantee has approved the Survey. In the event that an amended Survey is prepared, Grantee shall have five (5) business days from the delivery of the amended Survey (or from delivery of an amended Commitment on which the amended Survey is based, whichever is later) to review and approve all matters set forth or depicted thereon. If Grantee timely makes an objection to an amended Survey, the resolution of such objection shall be on the same terms, conditions and procedures as the resolution of objections regarding a Commitment or amended Commitment as set forth in **Paragraph 4(a)**.

c. **Environmental Report.** Within five (5) days following Opening of Escrow, Seller shall provide Grantee with a copy of the existing Phase I Environmental Site Assessment for the Property (which includes adjoining land also owned by Grantor) dated October 23,

FJS, P.C.

November 11, 2003 - 11:20 a.m.

4[455026.AGM.DedicationFJSPC.Signature.111103.J05]

2002, prepared by Construction Inspection & Testing Co., Job No. 02-216271, and the Excavation, Transportation & Disposal of Toxaphene Impacted Soils Report for the Property (which includes adjoining land also owned by Grantor) dated June 26, 2003, prepared by Recon Engineering, Inc. (collectively, the "ESA"). Upon Grantee's request, and at Grantor's sole cost and expense, Grantor shall cause the ESA to be re-certified to Grantee. In the event that either report collectively comprising the ESA is more than six (6) months old, then upon Grantee's request, Grantor shall cause an update of that portion of the ESA (the "**New ESA**") to be prepared by the same consultant(s) that prepared the ESA. Grantee shall have until the expiration of ten (10) business days from and after receipt of the ESA or New ESA, as applicable, to indicate whether Grantee disapproves of the ESA or New ESA. If Grantee fails to object to the ESA or New ESA in writing by giving notice to Grantor and Escrow Agent within such time period, Grantee shall be deemed to have approved all matters set forth in the ESA or New ESA, and this Condition shall be deemed to have been satisfied or waived. If Grantee timely objects to any matter disclosed by the ESA or New ESA by giving written notice to Grantor and Escrow Agent within such time period, Grantor may elect, but shall not be obligated to elect, by notice to Grantee and Escrow Agent within ten (10) business days thereafter, to cure prior to Closing, the matter(s) objected to by Grantee. If Grantor elects to cure, Grantor shall specify the exact actions proposed to be taken by Grantor (e.g., removal and disposal of ten feet of topsoil from a specified area, testing of the affected area following removal, and submission of test results to the appropriate governmental agencies), and Grantee shall have five business days within which to accept or reject Grantor's proposed actions. If Grantee accepts Grantor's proposed actions, Grantor shall not be in breach of its obligations under this Agreement if such actions fail to fully remediate the problem so that the Property may be developed as and for a police, fire and emergency medical station without further testing, remediation or reporting. If Grantor does not complete its proposed curative actions prior to the Closing Date, Grantor shall be in breach of its obligations under this Agreement. If Grantor declines to take curative actions, Grantee objects to Grantor's proposed curative actions or Grantor completes its approved proposed curative actions but such actions do not fully remediate the problem so that the Property may be developed as and for a police, fire and emergency medical station without further testing, remediation or reporting, Grantee's sole and exclusive remedy shall be to terminate this Agreement within five business days following notice to Grantee of the event giving rise to Grantee's termination right. If the ESA recommends further testing or study or if such further testing and study is conducted upon completion by Grantor (or its consultants) of the remedial actions proposed to be taken as provided above, such further testing and study shall be conducted at Grantor's expense, but Grantor shall have the right to give its prior written approval as to the scope and cost of such additional testing and study, such approval not to be unreasonably withheld or delayed. Grantee shall have a right to object to such additional studies or reports within the first to occur of (i) ten (10) business days following receipt thereof or (ii) the expiration of the Feasibility Period. If Grantee objects to any additional study or report obtained in response to the ESA or New ESA, as applicable, or following any curative actions by Grantor, the resolution of such objection shall be on the same terms, conditions and procedures as the resolution of objections to the ESA or New ESA.

d. **Physical Condition of the Property.** Subject to Grantee not interfering with the use and enjoyment of the Property by any agricultural tenant occupying any part of the Property, Grantee, its engineers, surveyors and/or other consultants or agents may enter upon the Property for the purposes of conducting tests and studies of the Property including without limitation surveys, physical site inspections, soils, utilities, drainage and environmental studies. Any part of the Property (or improvements or vegetation thereon), which has been disturbed by Grantee or its agents and which is not dedicated to Grantee shall be restored by Grantee substantially to its original condition (unless restoration is prohibited by governmental requirements regarding reporting of environmental conditions). Grantee shall indemnify, hold harmless and defend Grantor (with legal counsel reasonably satisfactory to Grantor) for, from and against all claims, damages, liabilities, costs and expenses (including reasonable attorneys fees) for personal injury, physical damage to property or mechanics' or materialmen's liens which may be asserted against Grantor or the Property or for any damage or disturbance to the Property, improvements or vegetation thereon as a result of any such entry by Grantee, its agents or designees. Grantee shall have the right to terminate this Agreement by notice to Grantor prior to the expiration of the Feasibility Period if Grantee determines that the physical condition of the Property is not acceptable to Grantee. Failure of Grantee to terminate this Agreement pursuant to the preceding sentence shall constitute Grantee's approval of the condition of the Property. Prior to any entry upon the Property, Grantee shall deliver to Grantor the certificate of commercial general liability insurance required under **Paragraph 9(a)**.

e. **General Feasibility.** Grantee's failure to give written notice of its disapproval of the results of inspections and studies conducted during the Feasibility Period and of the feasibility of the dedication of the Property to Grantee (exclusive of the condition of title to the Property, items shown on the Survey, the environmental condition of the Property, and the physical condition of the Property, all of which shall be approved or disapproved solely pursuant to the provisions of **Paragraphs 4(a), (b), (c), and (d)**), shall be deemed to be an election by Grantee to proceed with this transaction.

f. **Deemed Approval.** Except as specifically provided to the contrary in any subparagraph contained in this **Paragraph 4**, the failure by Grantee to timely notify Grantor and Escrow Agent of Grantee's objection, disapproval or rejection of any of the Conditions above described in this **Paragraph 4** and of Grantee's election to terminate as a consequence thereof within the time period specified shall be deemed conclusively to constitute Grantee's approval of such Condition and a waiver of Grantee's right to terminate this Agreement with regard to such Condition.

g. **Grantor Not Liable.** Except as otherwise provided in this Agreement, Grantor shall have no liability to Grantee in connection with any report, study, plan or investigation provided by a third party for Grantor's and/or Grantee's benefit, it being expressly understood and agreed that Grantee shall look solely to the provider for recovery of

any loss, claim, damage or the like sustained by Grantee as a result of any act or omission of such provider in the performance of its engagement.

5. **Title Insurance Policy; Deed.**

a. **Owner's Title Insurance Policy.** At the Closing, Grantor shall cause Escrow Agent to deliver to Grantee the Title Policy (or Title Insurer's unconditional, irrevocable commitment to issue the Title Policy effective as of the Closing within a reasonable time following the Closing).

b. **Deed.** At the Closing, Grantor shall deliver to Grantee the Special Warranty Deed granting and conveying to Grantee the Property.

6. **The Escrow.**

a. **Escrow Instructions.** Grantor and Grantee shall establish an Escrow (the "**Escrow**") with Escrow Agent to facilitate the consummation of the transaction contemplated by this Agreement. The escrow instructions (the "**Standard Instructions**"), attached hereto as **Exhibit "C"**, together with the provisions of this Agreement applicable to Escrow Agent, shall together constitute Escrow Instructions between and among Grantor, Grantee and Escrow Agent. In the event of any conflict or inconsistency between the provisions of the Standard Instructions and this Agreement or any deed, instrument or document executed or delivered in connection with the transaction contemplated hereby, the provisions of this Agreement, or such deed, instrument or document shall control.

b. **Opening.** Grantor and Grantee shall open Escrow with Escrow Agent simultaneously upon their execution hereof. For the purposes hereof, the term "**Opening of Escrow**" shall be the date inserted at the end of this Agreement by Escrow Agent, which date shall be the date on which this Agreement, executed by Grantor and Grantee, is delivered to and accepted by Escrow Agent.

c. **Closing.** The Closing of the purchase of the Property (the "**Closing**") shall occur on or before the thirtieth (30<sup>th</sup>) day from and after the expiration of the Feasibility Period. Closing shall take place in the office of Escrow Agent or at such other time and location as the parties may mutually agree.

d. **Action at the Closing by Grantor.** At the Closing, Grantor shall deliver or cause to be delivered to Escrow Agent for the account of Grantee (if not otherwise delivered prior thereto) all of the following instruments dated as of the Closing, fully executed by Grantor and, if appropriate, acknowledged:

i. Special Warranty Deed to the Property;

ii. Affidavit of Value pertaining to the Property;

iii. Affidavit of Non-Foreign Person in the form of **Exhibit "D"**; and

iv. Such other funds, instruments, or documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by Grantor pursuant to this Agreement.

e. **Action at the Closing by Grantee.** At the Closing, Grantee shall deliver or cause to be delivered to Escrow Agent for the account of Grantor (if not otherwise delivered prior thereto) all of the following, and with respect to any instruments or documents referred to below, all such items shall be dated as of the Closing, fully executed by Grantor and, if appropriate, acknowledged:

i. All funds in cash (or by wire transfer) necessary to pay the closing costs, fees, charges and title insurance premiums payable by Grantee at the Closing;

ii. Affidavit of Value pertaining to the Property; and

iii. Such other funds, instruments, or documents, including, without limitation, the certificates for development fee credits to be issued to Grantor as required under this Agreement, as are reasonably necessary to fulfill the covenants and obligations to be performed by Grantee pursuant to this Agreement.

f. **Closing Costs.** The Escrow fee payable to Escrow Agent in respect of the conveyance and transfer of the Property to Grantee shall be paid by Grantee. All other fees, recording costs, charges or expenses incidental to the sale, transfer and assignment of the Property to Grantee shall, except as otherwise herein expressly provided, be paid according to the then custom of real estate transactions consummated in Maricopa County, Arizona, as reasonably determined by Escrow Agent.

g. **Proration of Real Estate Taxes and Assessments.** *Ad valorem* real estate taxes in respect of the Property shall be prorated as of the date of the Closing, based on latest available information. A final proration shall occur after the Closing outside of Escrow and shall be based upon the actual tax bills pertaining to the Property and the parties shall make such payments, one to the other, outside of Escrow, as are necessary to adjust the proration of taxes to the actual amounts. If the Property will not be assessed as one or more separate assessment parcels as of the Closing, all real estate taxes for the Property shall be prorated based on an allocation of the parties' respective percentage ownership ratio (determined on a gross acreage basis) of the applicable tax parcel(s) within which all or a portion of the Property is included; provided, however, that any taxes allocable to improvements shall be allocated solely to the property within which they are located. At least 30 days prior to the due date of any real estate tax bill that includes only a portion of the Property, Grantor shall deliver to

Grantee a copy of the tax bill, together with Grantor's calculation of Grantor's and Grantee's share of the tax bill and payment for Grantor's share of the tax bill; Grantor shall be responsible for payment of all taxes not allocable to the Property even if Grantor is not then the owner of the other real property included in the same tax parcel(s) as the Property. If Grantor fails to remit its share of taxes to Grantor, then Grantee may, but shall have no obligation to, advance on Grantor's behalf Grantor's share of the taxes, including penalties and interest, and shall be entitled to reimbursement of all sums advanced at the rate of 18% per annum from the date of advancement until Grantee is repaid in full. If Grantor pays to Grantee Grantor's share of the taxes and Grantee thereafter fails to pay prior to delinquency the taxes on all of the tax parcel(s) of which the Property is a part, then Grantor, as its sole option, may pay the taxes for any affected tax parcel directly to the taxing authority. Upon payment of the tax bill and presentation to Grantee of receipted tax bills or other comparable evidence of payment, Grantor shall be entitled to reimbursement of all sums directly paid by Grantor plus interest at 18% per annum until Grantor is repaid by Grantee. Each party hereby agrees to indemnify, hold harmless and defend (with legal counsel reasonably acceptable to indemnitee) the other party for, from and against any costs, expenses, or damages suffered or incurred by the indemnitee as a result of the indemnitor's failure to comply with its covenants contained in this **Paragraph 6(g)** including without limitation reasonable attorneys' fees.

h. **Escrow Cancellation Charges.** If the Escrow fails to close because of Grantor's default, Grantor shall be liable for all customary escrow cancellation charges. If this Escrow fails to close because of Grantee's default, Grantee shall be liable for all customary escrow cancellation charges. If the Escrow fails to close for any other reason, Grantor and Grantee shall each be liable for one-half (½) of all customary escrow cancellation charges.

7. **Possession.** Grantor shall deliver possession of the Property subject to the Permitted Exceptions, as described in **Paragraph 4(a)**, and the terms and conditions of **Paragraph 9(b)** of this Agreement.

8. **Use of Property.** Grantee's use of the Property shall be subject to the terms, conditions and covenants of this Agreement. The provisions of this **Paragraph 8** shall survive the Closing and shall be deemed a continuing obligation of Grantee and its successors.

9. **Additional Covenants.** In addition to Grantee's and Grantor's covenants set forth elsewhere in this Agreement, Grantee and Grantor covenant and agree as follows:

a. **Liability Insurance.** Prior to entry upon the Property, Grantee shall deliver to Grantor a currently effective certificate of commercial general liability insurance written on an "occurrences" basis with a minimum combined single limit of \$1,000,000.00 with coverage for owned and non-owned motor vehicles and contractual liability and with a deductible amount reasonably acceptable to Grantor. Grantor shall be named as an additional insured under such insurance policies. Such insurance coverage may be included in blanket insurance policies. The insurer(s) of such certificates shall commit to give Grantor thirty (30)

days prior notice before cancellation of the policies or reduction in coverage, except in case of nonpayment of premiums, in which case the insurer(s) shall commit to give Grantor ten (10) days prior notice before cancellation or reduction in coverage. Such insurance shall be underwritten by corporate insurers licensed in Arizona which are reasonably acceptable to Grantor. Grantee agrees to maintain such insurance in force through the Closing Date. Grantee agrees from time to time to furnish current certificates of insurance to evidence that such insurance is in full force and effect as required hereunder.

b. **Agricultural Leases.** Grantee acknowledges that there is a lease on the Property for agricultural purposes. A true and complete copy of this lease shall be provided to Grantee by Grantor within five (5) business days following the Opening of Escrow and shall be approved by Grantee within thirty (30) days following receipt. This lease is identified in **Schedule 9(b)** of this Agreement. Grantee agrees that Grantor shall have the right to continue to lease the Property to such tenant (or successor) for agricultural purposes under the existing lease (or any replacement, renewal or extension thereof approved by Grantee, such approval not to be unreasonably withheld or delayed) unless and until the Closing. Any replacement, renewal or extension of the agricultural lease pertaining to the Property shall be on the same terms and conditions as the previous lease unless otherwise agreed in writing by Grantee. Grantee shall indemnify, hold harmless and defend Grantor (with legal counsel reasonably satisfactory to Grantor) for, from and against all claims, damages, liabilities, costs and expenses (including reasonable attorneys fees) for any damage or disturbance to crops as a result of any entry onto the Property by Grantee, its agents or designees prior to Close of Escrow and not caused solely by Grantor, its partners, members, managers, employees or agents. All indemnity obligations contained herein shall survive the termination of this Agreement and/or the Close of Escrow. Notwithstanding any provision in this Agreement to the contrary, if the Closing occurs, Grantor shall cause all agricultural leases to terminate upon Closing; in such event, all amounts, if any, payable to the tenant under such agricultural leases as a result of such termination shall be paid by Grantor; Grantor shall use reasonable efforts to attempt to terminate the lease at the end of a growing season if the crops proposed to be planted by the tenant will not be harvested prior to the Closing Date. Grantor shall also use commercially reasonable efforts to enforce the provisions of the lease on the Property prior to Closing, including without limitation the provisions thereof regarding environmental laws.

i. **Irrigation Grandfathered Water Rights.** Grantor shall assign to Grantee at Closing all irrigation grandfathered water rights respecting the Property.

c. **Restriction on Sale or Encumbrance.** Grantor shall not sell, convey, sign, lease (except for agricultural purposes) or otherwise transfer all or any part of the Property, or cause or permit any new liability, encumbrance or obligation to be placed or imposed upon all or any part of the Property from the Agreement Date until the Closing.

d. **Obligation to Restore.** During the course of Escrow, to the extent any damage or destruction to the Property is caused by Grantor's actions or the acts or omissions



of Grantor's tenants, then, subject to the availability of adequate insurance proceeds, Grantor shall restore the Property to substantially the same condition as exists on the date hereof.

e. **Discharge of Mechanics' Liens.** Grantor shall cause any liens filed against the Property prior to or after the Closing as a result of the acts or omissions of Grantor or Grantor's contractors, engineers, architects, agents or representatives to be released and discharged promptly.

f. **Existing Indebtedness.** The Commitment shall contain recording information regarding each lien or encumbrance encumbering any part of the Property (collectively, the "**Existing Indebtedness**"). Grantor shall perform timely all of its obligations under the Existing Indebtedness and shall cause same to be discharged and released of record at or prior to the Closing.

g. **Agricultural Water Systems.** Grantee covenants and agrees to cause the existing Roosevelt Irrigation District ("**RID**") irrigation ditches to be relocated on the Property and/or to install concrete pipe underground in such a manner so as to enable the continuation, without interruption, of farming/agricultural activities on the remaining parcels owned by Grantor which are located contiguous to the Property as such activities have heretofore been conducted.

h. **Fire and Emergency Medical Facility.** Grantee acknowledges, covenants and agrees that Grantee shall commence construction on the Property, within a reasonable period of time from and after the Close of Escrow hereunder, and thereafter proceed with reasonable diligence to complete said construction within a reasonable period of time following commencement thereof, of a permanent fire and emergency medical facility of a size and containing such equipment, manpower and facilities as typically provided by Grantee in connection with such permanent facilities. Such facility shall serve the entire Pueblo Verde development and a portion of that certain master-planned community commonly known as Canyon Trails (including part of the "*Additional Property*", as that term is defined in the Development Agreement). Following the dedication of the Property as provided in this Agreement, in the event there is any delay in the City constructing the permanent fire and emergency medical facility on the Property, it shall not cause any delay in the development of any part of Canyon Trails or Pueblo Verde, *i.e.*, it shall not result in the refusal of the City to: (x) continuously process plats, site plans and/or other engineering documents, and/or (y) issue approvals, permits and/or certificates of occupancy. This covenant shall survive the dedication of the Property and shall not merge into the deed or other instrument executed or delivered in connection with such dedication.

i. **No Dedication of Other Sites.** Grantee acknowledges and agrees that: (i) Grantee has selected the Property as an alternate site for a permanent fire and emergency medical facility, to satisfy the requirements under Section 9(C)(2) of that certain Development Agreement respecting Canyon Trails recorded in the official records of the Maricopa County

Recorder on August 18, 1999, as Document No. 99-0780645, M.C.R.; and (ii) the permanent fire and emergency medical facility to be constructed on the Property shall be in lieu of any temporary or permanent police, and/or fire and emergency medical facility to be located within Canyon Trails.

j. **Survival of Covenants.** The covenants contained in this **Paragraph 9** shall survive the Close of Escrow hereunder, and shall be specifically enforceable by the benefitted party and its successors and assigns.

10. **Representations and Warranties of Grantee.** Grantee acknowledges, covenants, represents and warrants to Grantor that the following are true in all material respects as of the Agreement Date and will be true as of the Closing in all material respects, and in entering into this Agreement, Grantor is relying upon the following:

a. **Due Organization, Etc.; Binding Agreement; Authority.** Grantee is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Arizona. Grantee's execution and delivery of this Agreement, and the consummation of the transactions contemplated and required hereby, will not result in any violation of, or default under, any terms or provision of any agreement, instrument, mortgage, loan agreement or similar document to which Grantee is a party or by which Grantee is bound. Grantee further represents that it is not a partner or joint venturer with Grantor in connection with the transactions contemplated by this Agreement, and that it is entering into this Agreement and any other contract, instrument and document contemplated hereby, voluntarily and solely for its own benefit. Upon Grantee's execution of this Agreement, this Agreement will be binding and enforceable against Grantee in accordance with its terms, and upon Grantee's execution of the additional documents contemplated by this Agreement, they will be binding and enforceable against Grantee in accordance with their terms. The person(s) signing this Agreement on behalf of Grantee have the requisite legal authority to bind Grantee to the terms, covenants and conditions of this Agreement.

b. **No Litigation.** There is no litigation, investigation or proceeding pending or, to the best of Grantee's knowledge, contemplated or threatened against Grantee which would impair or adversely affect Grantee's ability to perform its obligations under this Agreement or any other instrument or document related hereto.

c. **No Warranties.** Except as expressly provided in this Agreement, Grantor, its employees, agents representatives and attorneys have not made, nor has Grantee relied on, any representations, warranties, guarantees, or promises (oral, written or implied) regarding the condition of the Property or the suitability of the Property for Grantee's intended use or any other use.

d. **Investigation of Property by Grantee.** Prior to the Closing, Grantee shall have made its own examination, inspection and investigation of the condition of the Property,

(including, without limitation the subsurface thereof, all soil, environmental, engineering and other conditions which may affect construction thereon) and all matters affecting the development thereof as it deems necessary or appropriate, and Grantee is entering into this Agreement and accepting the dedication of the Property based upon the results of such inspections and investigations and not in reliance on any statements, representations, or agreements of Grantor or its agents not contained in this Agreement. Grantee acknowledges and agrees that it is acquiring the Property in an "AS IS" and "WHERE IS" condition, except for representations and warranties of Grantor as stated in this Agreement.

The warranties and representations of Grantee set forth in this **Paragraph 10** shall survive the Closing for a period of one (1) year. Grantor agrees for itself and its successors and assigns to commence any legal action for breach of any such warranty and representation within one (1) year after the Closing, and Grantor for itself and successors and assigns hereby waives all rights and remedies against Grantee, its successors and assigns arising out of or in connection with any alleged breach of warranty or representation as to which a legal action has not been commenced within said 1-year limitation.

**11. Representations and Warranties of Grantor.** Grantor acknowledges, represents and warrants to Grantee that, to Grantor's actual knowledge, the following are true in all material respects as of the Agreement Date and will be true as of the Closing in all material respects, and in entering into this Agreement, Grantee is relying upon the following:

a. **Due Organization, Etc.** Grantor is a duly organized, validly existing Arizona limited liability limited partnership, and is duly authorized to transact business in the State of Arizona. The transactions contemplated by this Agreement and the execution and delivery of all documents required herein, and its performance hereunder have been duly authorized by Grantor. The execution and deliver of this Agreement and any other document required herein and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, or default under, any term or provision of any agreement, instrument, mortgage, loan or similar documents to which Grantor is a party of or by which Grantor is bound. Grantor further represents that it is not a partner or joint venturer with Grantee in connection with the transactions contemplated by this Agreement, and that it is entering into this Agreement and any other contract, instrument and document contemplated hereby, voluntarily and solely for its own benefit. Upon Grantor's execution of this Agreement, this Agreement will be binding and enforceable against Grantor in accordance with its terms, and upon Grantor's execution of the additional documents contemplated by this Agreement, they will be binding and enforceable against Grantor in accordance with their terms. The person(s) signing this Agreement on behalf of Grantor have the requisite legal authority to bind Grantor to the terms, covenants and conditions of this Agreement.

b. **Foreign Person.** Grantor is not a Foreign Person as such term is defined under the Internal Revenue Code §1445.

c. **No Litigation.** There is no litigation, investigation or proceeding pending or, to the actual knowledge of Grantor, contemplated or threatened against Grantor or the Property which would impair or adversely affect Grantor's ability to perform its obligations under this Agreement or under any contract, instrument or document related hereto.

d. **No Mechanics Liens.** There are no mechanics' or materialmen's liens perfected against the Property (other than those resulting from the acts or omissions of Grantee or its agents).

e. **No Condemnation.** There are no existing, pending or, to Grantor's actual knowledge, anticipated condemnation or similar proceedings against or involving the Property.

f. **No Undisclosed Assessments.** There are no taxes, assessments (special, general or otherwise) or bonds of any nature affecting the Property, or any portion thereof, except as disclosed in the Title Commitment. Grantor has no understanding or agreement with any taxing authority respecting the imposition or deferment of any taxes or assessments respecting the Property.

g. **Ownership and Authority.** Grantor is the owner of the Property and has full power and authority to enter into and perform this Agreement in accordance with its terms.

h. **No Leases or other Possessory Rights.** Except for agricultural leases identified on **Schedule 9(c)**, or leases or other possessory rights disclosed on the Commitment, there are no farm or other leases applicable to or affecting the Property. There are no other structures, facilities, individuals or entities with any right to possession of any part of the Property. To the extent that any other such leases or other such possessory rights are discovered to exist, at the request of Grantee, Grantor shall obtain a termination thereof on or before the Closing.

i. **Environmental.** Except as may be disclosed in the ESA and except for fertilizers, pesticides and other chemicals and petroleum products which may have been used or applied in the farming operations conducted on the Property, Grantor has no actual knowledge that there exists or has existed an environmental hazard, and Grantor itself has not caused any generation, production, location, transportation, storage, treatment, discharge, disposal, release or threatened release upon or under the Property of any toxic or hazardous substance or "**pollutant**" (as that term is defined in A.R.S. § 49-201(23)) subject to regulation under the Resource Conservation and Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended by the Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 1601, et seq.

U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300h, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Arizona Environmental Quality Act, A.R.S. § 49-201, et seq.; the Arizona "State Superfund" provisions, A.R.S. § 49-281, et seq.; the Arizona Solid Waste Management provisions, A.R.S. § 49-701, et seq.; the Arizona Hazardous Waste Management Act, A.R.S. § 49-921, et seq.; and the Arizona Underground Storage Tank provisions, A.R.S. § 49-1001, et seq., or any other applicable State or Federal environmental protection law or regulation. Grantor also has no knowledge that, except to the extent disclosed in the ESA, there exists or has ever existed any underground storage tanks or septic tanks on the Property.

j. **Limitations.**

i. Grantor does not warrant or represent the accuracy or completeness of the Survey, the ESA, the Property Reports, or any other reports, studies or plans furnished to Grantee by Grantor or at Grantor's direction and shall have no liability to Grantee in connection therewith; provided, however, that Grantor warrants and represents that it has no actual knowledge of any material inaccuracies or incompleteness in any such reports, studies, or plans; and, provided, further, that, prior to Closing, Grantor shall notify Grantee promptly of any materially inaccurate or incomplete matter of which Grantor obtains knowledge as defined in **Paragraph 11(j)(2)**;

ii. To the extent that any of the representations and warranties made by Grantor pursuant to this **Paragraph 11** are made to Grantor's knowledge, Grantee acknowledges and agrees that such representations and warranties are based on the actual knowledge of Bruce T. Hilby and Richard C. Wilson as of the Agreement Date and as of the Closing Date, and that Grantor and such individuals have made such representations and warranties without making any investigation or inquiry whatsoever with respect thereto, and Grantee is not relying on Grantor or such individuals to have made any such investigation or inquiry. Anything in this Agreement to the contrary notwithstanding, such individuals shall have no personal liability or obligation under this Agreement. As used in this Agreement, "**Grantor's actual knowledge**," the "**knowledge of Grantor**" or any similar phrase shall mean the actual present conscious awareness of Bruce T. Hilby and Richard C. Wilson, without making any independent investigations or inquiries, and specifically negating the doctrines of constructive or imputed knowledge or notice;

iii. As to the above warranties and representations of Grantor which are based upon lack of knowledge of Grantor, if, after the Agreement Date and prior to the Closing Date, Grantor discovers that any of such warranties or representations is untrue in any material respect, then Grantor promptly shall notify Grantee of such discovery, in which event such warranty or representation shall be deemed modified to the extent described in such notice retroactively to the Agreement Date. If Grantor gives notice to Grantee of such modification of any such warranty or representation, Grantee shall have ten (10) days after receipt of such notice (the "**First 10-day Period**") in turn to notify Grantor of Grantee's

determination that any such modification to such warranty or representation reasonably could have a material negative impact on Grantee's development of the Property as and for a police, fire and emergency medical facility site. As used in this **Paragraph 11(i)(3)**, the word "**material**" shall mean only those changes which reasonably could have a material negative financial impact on Grantee's development of the Property as provided in the preceding sentence. If no such written approval or disapproval is delivered to Grantor within the First 10-day Period, Grantee shall be deemed to have approved such change. If Grantee delivers Grantor its specific written objections within the First 10-day Period, Grantor and Grantee shall proceed to negotiate in good faith to resolve such objections. If such objections are not resolved within ten (10) days after the objections are delivered to Grantor (the "**Negotiation Period**"), Grantee may terminate this Agreement in accordance with **Paragraph 16** hereof by delivering to Grantor and Escrow Agent written notice of its election to do so within ten (10) days after the expiration of the Negotiation Period (the "**Second 10-day Period**"). If Grantee fails to terminate the Agreement during the Second 10-day Period, Grantee shall be deemed to have waived its objections and its right to terminate as a result of such objections.

iv. The warranties and representations of Grantor set forth in this **Paragraph 11** shall survive the Closing for a period of one (1) year (the "**limitation period**"). Grantee agrees for itself and its successors and assigns to commence any legal action for breach of any such warranty and representation within the limitation period, and Grantee for itself and successors and assigns hereby waives all rights and remedies against Grantor, its successors and assigns arising out of or in connection with any alleged breach of warranty or representation as to which a legal action has not been commenced within the limitation period; and

v. In the event that, prior to the Closing, Grantee receives written notice or acquires actual knowledge that any of the foregoing representations and warranties is untrue, Grantee shall promptly advise Grantor in writing of such notice, information or knowledge. Grantee shall be deemed to have waived such representation and warranty to the extent Grantee fails to advise Grantor of such notice or knowledge pursuant to the preceding sentence and thereafter consummates the transaction contemplated hereby; Grantor acknowledges that such waiver shall not apply if Grantee receives information pertaining to a representation or warranty but does not acquire actual knowledge that any representation or warranty is untrue. In the event Grantee knowingly waives any representation or warranty, then Grantor shall have no liability under this **Paragraph 11** for such representation or warranty to the extent waived.

12. **Attorneys' Fees.** If either party hereto breaches any provisions of this Agreement, the breaching party shall pay to the non-breaching party all reasonable attorneys' fees and other costs and expenses incurred by the non-breaching party in enforcing this Agreement or preparing for legal or other proceedings regardless of whether suit is instituted. If it becomes necessary for either party to employ legal counsel or to bring an action at law or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, the

prevailing party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other party, including, without limitation, reasonable attorneys' fees, reasonable expert witness' fees, costs of deposition transcripts and tapes and other pre-trial discovery costs set by the Court and not a jury, at both trial and appellate levels, and if any judgment is obtained by the prevailing party, all such costs, expenses and fees shall be included in the judgment.

13. **Notices.** All notices or other communications required or provided to be sent by either party or Escrow Agent shall be in writing and shall be sent by United States Postal Service, postage prepaid, registered or certified, return receipt requested, or any nationally known overnight delivery service, or by courier, in person, or by confirmed facsimile transmission followed by delivery by any other method provided herein (but such follow-up delivery shall not affect the immediate effectiveness of facsimile notices). All notices shall be deemed to have been given forty-eight (48) hours following deposit in the United States Postal Service or upon personal delivery if sent by overnight delivery service, courier or personally delivery or upon facsimile transmission with printed confirmation of successful transmission. All notices shall be addressed to the party at the address below:

If to Grantor:

Mr. Bruce T. Hilby  
Mr. Richard C. Wilson  
c/o COLDWATER PROPERTIES  
4730 East Indian School Road, #120-260  
Phoenix, Arizona 85018  
Facsimile No. 602-508-8510

With a copy to:

Joseph J. Moritz, Jr., Esq.  
FRANCIS J. SLAVIN, P.C.  
2198 East Camelback Road, Suite 285  
Phoenix, Arizona 85016  
Facsimile No. 602-381-1920

If to Grantee:

THE CITY OF GOODYEAR  
190 N. Litchfield Road  
Goodyear, AZ 85338  
Attention: City Manager  
Facsimile No. 623-932-1177

With a copy to:

James H. Oeser, City Attorney  
THE CITY OF GOODYEAR  
190 N. Litchfield Road  
Goodyear, AZ 85338  
Facsimile No. 623-932-0184

If to Escrow Agent:

Carol Peterson, Escrow Agent  
FIRST AMERICAN TITLE INSURANCE COMPANY  
4801 East Washington Street, Suite 110  
Phoenix, Arizona 85034  
Facsimile No. 602-685-7580

Any address or name specified above may be changed by notice given to the addressee by the other party in accordance with this **Paragraph 13**. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the legal counsel for such party.

**14. Grantor's Remedies.**

a. **Pre-Closing.** If Grantee shall breach any of the terms or provisions of this Agreement or otherwise default at or prior to the Closing, then following the giving of written notice of default to Grantee by Grantor and expiration of the lesser of ten (10) calendar days or the number of days remaining prior to the then-scheduled Closing Date, Grantor's sole remedy shall be to terminate this Agreement and to retain the Earnest Money deposited with Escrow Agent plus interest thereon as liquidated damages. Notwithstanding the preceding sentence, Grantee's failure to close escrow on the then-scheduled Closing Date shall be a material default as to which Grantor shall not be entitled to any notice of default or any opportunity to cure such default. Grantor and Grantee acknowledge that it would be extremely difficult if not impossible to ascertain Grantor's actual damages and that the Earnest Money is a reasonable forecast of just compensation to Grantor resulting from Grantee's breach. Upon termination of this Agreement by Grantor and payment to Grantor of the sum of liquidated damages, neither party shall have any further obligation or liability hereunder, except indemnity obligations and obligations to restore the Property contained herein. Notwithstanding the foregoing, Grantee shall be entitled to the return of the Earnest Money upon any termination prior to expiration of the Feasibility Period.



b. **Post-Closing.** If, after the Closing, Grantee shall breach any of the terms or provisions of this Agreement, and any such breach shall remain uncured for a period of thirty (30) days following written notice to Grantee, or if it shall be determined by a court of competent jurisdiction that Grantee breached any of the representations, warranties or covenants made by Grantee at, or as of, the Closing, or if Grantee otherwise defaults in its post-Closing obligations, and any such breach shall remain uncured for a period of thirty (30) days following written notice to Grantee, Grantor shall have, in addition to the rights and remedies set forth elsewhere in this Agreement and/or in any documents or instruments delivered to Grantor at the Closing, any right or remedy available at law or in equity, including the right to demand and have specific performance; provided, however, that, in all circumstances, Grantor shall only be entitled to seek recovery of actual damages which directly result from Grantee's breach, Grantor hereby waiving any right to seek or obtain incidental or consequential damages, and provided, further, that Grantor waives any right to rescind the sale and purchase transaction.

#### 15. **Grantee's Remedies.**

a. **Pre-Closing.** If, on or before the Closing, Grantor commits a material breach of any of the terms or provisions of this Agreement or otherwise defaults hereunder, and any such breach shall remain uncured for a period equal to the lesser of ten (10) calendar days or the number of days remaining prior to the then-scheduled Closing Date following written notice to Grantor, Grantee may either (i) terminate this Agreement by written notice to Grantor and Escrow Agent and be entitled to the immediate return of the Earnest Money; (ii) waive such default and consummate the transaction contemplated hereby in accordance with the terms hereof; or (iii) institute all proceedings necessary to specifically enforce the terms of this Agreement and cause title to the Property to be conveyed to Grantee, Grantee hereby waiving its right to seek monetary damages; provided that if specific performance is not available as a remedy to Grantee, Grantee may pursue an action at law to recover its direct, actual damages incurred in connection with the negotiation and execution of this Agreement, and the performance of any investigations and studies conducted by or on behalf of Grantee during the Feasibility Period, Grantee hereby expressly waiving its right to seek any incidental or consequential or punitive damages.

b. **Post-Closing.** If, after the Closing, Grantor shall commit a material breach of any of the terms or provisions of this Agreement, and any such breach shall remain uncured for a period of ten (10) days following written notice to Grantor, or if it shall be determined by a court of competent jurisdiction that Grantor materially breached any of the representations, warranties or covenants made by Grantor at, or as of, the Closing, or if Grantor otherwise defaults in its post-Closing obligations, and any such breach shall remain uncured for a period of ten (10) days following written notice to Grantor, Grantee shall have, in addition to the rights and remedies set forth elsewhere in this Agreement and/or in any documents or instruments delivered to Grantee at the Closing, any right or remedy available at law or in equity, including the right to demand and have specific performance; provided,

however, that, in all circumstances, Grantee shall only be entitled to seek recovery of actual damages which directly result from Grantor's breach, Grantee hereby waiving any right to seek or obtain incidental or consequential damages, and provided, further, that Grantee waives any right to rescind the sale and purchase transaction except for fraud or intentional misrepresentation of a material matter.

16. **Termination of Agreement.** If, at or prior to the Closing, this Agreement is terminated by Grantee, as allowed hereunder or is deemed terminated by Grantee hereunder or is automatically terminated pursuant to **Paragraph 7**, Escrow Agent shall return to Grantee the Earnest Money together with all earnings thereon, less Grantee's share of Escrow Termination Fees, as appropriate. If this Agreement is terminated under such circumstances and Grantor holds all or a part of the Earnest Money, then Grantor immediately shall pay such Earnest Money to Grantee. In any event of termination, Escrow Agent shall return all documents to the parties who supplied the documents. Upon such return of Earnest Money (or retention of Earnest Money by Grantor as liquidated damages) and delivery of documents, the Escrow shall be deemed canceled, Grantee's obligation to purchase the Property from Grantor shall be deemed terminated and Grantor's obligation to sell the Property to Grantee shall be deemed terminated. All indemnity and restoration obligations contained herein shall survive the termination of this Agreement.

17. **Survival of Covenants, Agreements, Representations and Warranties.** Subject to the limitations, restrictions, exclusions and requirements set forth in **Paragraphs 10 and 11** or elsewhere in this Agreement, all covenants, agreements, representations and warranties set forth in this Agreement shall survive the Closing, and shall not merge into the deed or other instrument executed or delivered in connection with the transaction contemplated hereby.

18. **Modification of Agreement.** No modification of this Agreement shall be deemed effective unless in writing and signed by the parties hereto, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing and executed by the party against whom enforcement of the waiver is sought.

19. **Further Instruments.** Each party, promptly upon the request of the other or upon the request of the Escrow Agent, shall execute and have acknowledged and delivered to the other or to Escrow Agent, as may be appropriate, any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of his Agreement and which are consistent with the provisions hereof.

20. **Entire Agreement.** This Agreement constitutes the entire contract between the parties with regards to the purchase, sale and development of the Property. All terms and conditions contained in any other writings previously executed by the parties and all other discussions, understandings or agreements regarding the Property and the subject matter hereof shall be deemed to be superseded hereby.

21. **Inurement.** Subject to restrictions on assignment by Grantee, this Agreement shall be binding upon and inure to the benefit of the successors and assigns, if any, of the respective parties hereto.

22. **Applicable Law.** This Agreement shall be governed by and interpreted and construed in accordance with the laws of the State of Arizona.

23. **Descriptive Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions hereof.

24. **Time of the Essence.** Time is of the essence of this Agreement. The parties hereby waive any so called "**13-day notice requirement**" contained in the Printed Escrow Instructions.

25. **Condemnation.** In the event that between the date hereof and the Closing, all or any part of the Property not previously conveyed to Grantee shall be taken or appropriated for public or quasi-public use by right of eminent domain, or if proceedings in condemnation or eminent domain shall be instituted or threatened, Grantee, at its option, may elect to (i) terminate this Agreement by written notice to Grantor within ten (10) business days following Grantee's receipt of written notice of such event, whereupon this Agreement shall terminate and thereafter neither party shall have any further obligation or liability hereunder, or (ii) proceed with the purchase of the Property, in which event Grantee shall be entitled to the condemnation proceeds relating to such part(s) of the Property. If prior to the applicable Closing such proceeds are paid to Grantor, the amount of such proceeds paid to Grantor shall be applicable to the Purchase Price payable at such Closing.

26. **Time Periods.** In the event the time for performance of any obligation hereunder expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

27. **Assignment.** Grantee shall not prior to the Closing voluntarily or by operation of law assign or otherwise transfer or encumber all or any part of Grantee's interest in this Agreement or in the Property. Any attempt to assign, transfer or encumber shall be void and shall be a breach of this Agreement. Subject to the continuing obligation to perform its duties and covenants hereunder, Grantor may freely assign, transfer or encumber all or any of its right, title and interest in this Agreement and/or the Property; provided, however, that at the Closing, fee simple title to the Property shall be conveyed to Grantee subject only to the Permitted Exceptions applicable thereto and such other matters approved by Grantee or resulting from Grantee's acts or omissions of those of Grantee's agents.

28. **Construction.** The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

29. **Interpretation.** In this Agreement the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the words "*person*" and "*party*" include corporation, partnership, individual, firm, trust, or association wherever the context so requires.

30. **Exhibits.** All exhibits attached hereto and referred to in this Agreement are incorporated herein by this reference and are part of this Agreement.

31. **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

32. **Recordation.** Neither this Agreement nor any Memorandum thereof shall be recorded by Grantee or at Grantee's direction or on Grantee's behalf prior to Closing.

33. **Limitation of Recourse of Grantor's Members.** Grantee acknowledges that if Grantor breaches this Agreement, Grantee shall have no recourse to the assets, properties or funds of any manager, member, partner, officer, director, employee or shareholder of the Grantor or of any general partner, manager, or managing member of Grantor, and no such manager, member, partner, officer, director, employee or shareholder shall have any personal liability to Grantee. Grantee's sole recourse shall be to the assets and properties of Grantor.

34. **Arbitration.** Any dispute between the parties regarding the interpretation of any provision of this Agreement shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association ("**AAA**"). The fees and costs of the arbitrator shall be shared equally; however, the arbitrator shall award costs and/or attorney fees to the prevailing party. Grantee and Grantors agree to select a single arbitrator (who shall be an Arizona licensed attorney with at least ten years experience in real estate transactions, and, if the parties cannot agree, the arbitrator shall be selected by AAA), take no more than two (2) depositions each, use no more than one (1) expert witness each, hold a hearing before such arbitrator and cause such arbitrator to render a decision and to issue an award of fees and costs within thirty (30) days from and after the date of submission of the dispute to arbitration. Within ten (10) days after either party makes a demand for arbitration on the other party, each party shall deliver to the other a list of names of not less than five (5) arbitrators each party finds acceptable. Any candidate who appears on both lists and is willing to serve shall be appointed as the arbitrator; if multiple candidates appear on both lists, the arbitrator shall be selected from such candidates by lot. The arbitrator shall be selected and the hearing shall occur within twenty five (25) days after giving of the arbitration demand. Notwithstanding the

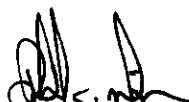
foregoing, if either of the following named persons are willing to serve as arbitrator, such person shall act as the arbitrator: Gary L. Birnbaum, or Ronald M. Stoll; if more than one such person is willing to serve, the person willing to appear whose name appears first in the foregoing list shall act as the arbitrator.

**GRANTOR:**

SARIVAL 155, LLLP, an Arizona limited liability limited partnership

By: COLDWATER PROPERTIES, an Arizona general partnership

By: Wilson Investment Co., an Arizona close corporation, General Partner

By:   
Richard C. Wilson, Manager of  
Wilson Investment Co.

Date: \_\_\_\_\_, 2003

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**GRANTEE:**

CITY OF GOODYEAR, an Arizona municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2003

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form and Authority:

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_, 2003

**ESCROW AGENT ACCEPTANCE:**

Escrow Agent hereby agrees to be bound by the provisions hereof and to perform its obligations as set forth herein in accordance with the terms hereof, and to prepare and file all necessary information, reports and returns regarding the transaction contemplated hereby as required by the Internal Revenue Code of 1986 (the "Code"), including, without limitation, I.R.S. Form 1099-B. Escrow Agent agrees to indemnify, hold harmless and defend Grantee, Grantor and their respective attorneys for, from and against all claims, costs, liabilities, penalties or expenses resulting from Escrow Agent's failure to file all appropriate reports and forms required to be filed under the Code, including, without limitation, reasonable attorneys fees.

FIRST AMERICAN TITLE INSURANCE COMPANY,  
a California corporation

By: \_\_\_\_\_  
Its: Branch Manager

Date of Execution: \_\_\_\_\_, 2003

## **LIST OF EXHIBITS AND SCHEDULES**

### **I. EXHIBITS**

- Exhibit A - Legal Description of the Property
- Exhibit B - Special Warranty Deed
- Exhibit C - Escrow Instructions
- Exhibit D - Non-Foreign Person Affidavit

### **II. SCHEDULES**

- Schedule 9(c) - Agricultural Lease



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

# LEGAL DESCRIPTION FIRE STATION PARCEL

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 18, BEING A BRASS CAP FLUSH FROM WHICH THE NORTHEAST CORNER OF SECTION 18 BEING A BRASS CAP IN A HANDHOLE, BEARS N 89°53'00" E, A DISTANCE OF 5147.33 FEET;

THENCE N 89°53'00" E, ALONG THE NORTH LINE OF SAID SECTION 18, A DISTANCE OF 740.54 FEET;

THENCE DEPARTING SAID LINE S 00°23'37" E, PARALLEL WITH THE WEST LINE OF SAID SECTION 18, A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

THENCE N 89°53'00" E, A DISTANCE OF 176.00 FEET;

THENCE S 45°07'00" E, A DISTANCE OF 76.63 FEET;

THENCE S 00°07'00" E, A DISTANCE OF 45.82 FEET;

THENCE S 08°51'46" E, A DISTANCE OF 65.76 FEET;

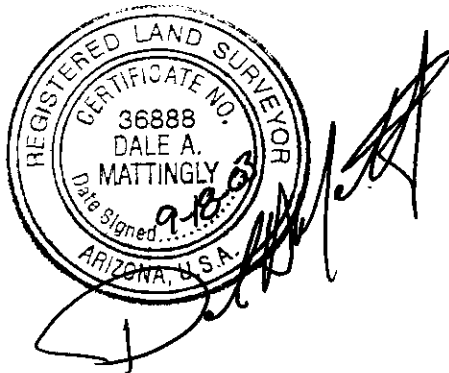
THENCE S 00°07'00" E, A DISTANCE OF 60.00 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEAST AND HAVING A RADIUS OF 350.00 FEET;

THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 32°46'52", A DISTANCE OF 200.24 FEET;

THENCE S 89°53'00" W, A DISTANCE OF 293.91 FEET;

THENCE N 00°23'37" W, A DISTANCE OF 414.51 FEET BACK TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 2.29 ACRES OR 99749.0 SQUARE FEET MEASURED.



**EXHIBIT "B"**

When Recorded, Mail to:

First American Title Insurance Company  
Carol Peterson, Escrow Officer  
4801 East Washington Street, Suite 110  
Phoenix, AZ 85034

**SPECIAL WARRANTY DEED**

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations received, \_\_\_\_\_, an Arizona \_\_\_\_\_ ("Grantor"), does hereby convey to \_\_\_\_\_, a(n) \_\_\_\_\_, the following described real property (the "*Property*") situated in Maricopa County, Arizona:

SEE EXHIBIT "A" ATTACHED HERETO AND BY  
THIS REFERENCE MADE A PART HEREOF

SUBJECT TO: current taxes; patent reservations; all covenants, conditions, restrictions, reservations, easements and declarations or other matters of record or to which reference is made in the public record; any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate survey, of the Property would reveal; and the applicable zoning and use regulations of any municipality, county, state, or the United States affecting the Property.

AND THE GRANTOR hereby binds itself and its successors to warrant and defend the title against the acts of the Grantor and no other, subject to the matters set forth above.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Grantor has caused this Special Warranty Deed to be executed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

GRANTOR:

\_\_\_\_\_, an Arizona  
\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

and

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, an Arizona \_\_\_\_\_, for and on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## EXHIBIT "C"

### ESCROW INSTRUCTIONS

#### GRANTOR AND GRANTEE:

1. Will deposit with Escrow Agent all documents necessary to complete the sale as established by the terms of these instructions and authorize Escrow Agent to deliver or record said documents as required herein.
2. Any amendments or addenda to these escrow instructions shall be in writing, executed by the Grantor and Grantee and Escrow Agent shall not be bound by any unilateral instructions.
3. Authorize Escrow Agent to act upon any statement furnished by a lien holder or his agent, without liability or responsibility for the accuracy of such statement.
4. Authorize Escrow Agent to pay from available funds held by it for said purpose amounts necessary to procure documents and to pay charges and obligations necessary to consummate this transaction.
5. Direct that all money payable be paid to Escrow Agent unless otherwise specified. Direct that the disbursement of any funds shall be made by check of Escrow Agent.
6. Direct that when these instructions and all title requirements have been complied with, Escrow Agent shall deliver by recording in the appropriate public office all necessary documents, disburse all funds and issue the title insurance policy.
7. Shall indemnify and save harmless Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities, which it may incur or sustain in connection with these instructions, any interpleader action, or any servicing account arising herefrom and will pay the same on demand, except those arising from Escrow Agent's negligence.

#### GRANTOR AND GRANTEE AGREE:

8. Grant to Escrow Agent authority to reimburse and offset itself for its charges and for all damages or expenses which it may incur or sustain in connection herewith (except those arising from Escrow Agent's negligence) from all of the rights, title and interest of Grantor and Grantee in all of the documents and money deposited hereunder.
9. Escrow Agent has the right to resign upon written ten day notice; if such right is exercised, all funds and documents shall be returned to the party who deposited them.

10. Should Escrow Agent be closed on any day of compliance with these instructions the requirement may be met on the next succeeding day Escrow Agent is open for business.
11. Time is of the essence of any agreement to pay or perform hereunder. No payment of Grantee, Mortgagor, or Trustor of such amounts shall be received or receipted for by Escrow Agent unless all amounts due as of the date of compliance are paid unless and until written authority therefor has been delivered to Escrow Agent by the payee of said amount.
12. Escrow Agent may at its election, in the event of any conflicting demands made upon it concerning these instructions or this escrow, hold any money and documents deposited hereunder until it receives mutual instructions by all parties or until a civil action shall have been concluded in a Court of competent jurisdiction, determining the rights of the parties. In the alternative, Escrow Agent may at any time, at its discretion, commence a civil action to interplead any conflicting demands to a Court of competent jurisdiction.
13. It is fully understood that Escrow Agent in connection with these instructions cannot give legal advice to any party hereto.
14. The title insurance provided for, unless otherwise specified, shall be evidenced by the standard form of title insurance of First American Title Insurance Company, on file with the Insurance Director of the State of Arizona subject to exceptions shown in the commitment for title insurance and title insurance policy issued.

NOTE: There are some matters for which First American Title Insurance Company, assumes no liability, including but not limited to unrecorded liens, personal property taxes; transfer of personal property; utility charges, boundary lines, location of improvements and possession; compliance with zoning, building ordinances and building restrictions; reservations and exceptions in Patents.

**EXHIBIT "D"**

**NON-FOREIGN PERSON AFFIDAVIT**

THIS AFFIDAVIT is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, an Arizona \_\_\_\_\_ (the "*Transferor*"), for the benefit of \_\_\_\_\_, an Arizona \_\_\_\_\_ ("*Transferee*").

Section 1445(a) of the Internal Revenue Code of 1986 (hereinafter referred to as the "*Code*"), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the Transferee that withholding of tax is not required upon the disposition by Transferor of an interest in the Property described on **Exhibit "A"** hereto, the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate or other foreign person (as those terms are defined in the Code and Income Tax Regulations);

2. Transferor's U.S. Employer Identification Number or Social Security Number, as applicable is \_\_\_\_-\_\_\_\_; and

3. Transferor's address is \_\_\_\_\_.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, the undersigned declare that they have examined this certification and, to the best of their knowledge and belief, it is true, correct and complete, and the undersigned further declare that they have authority to sign this document on behalf of Transferor.

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TRANSFEROR:

\_\_\_\_\_, an Arizona  
\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

and

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ of  
\_\_\_\_\_, an Arizona \_\_\_\_\_, for and on behalf  
thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



**SCHEDULE 9(c)**

**AGRICULTURAL LEASE**

## FARM LEASE

This Lease, made and entered into this 31<sup>st</sup> day of December, 2001 by and between **SARIVAL 155 LIMITED LIABILITY LIMITED PARTNERSHIP**, an Arizona limited liability limited partnership, hereinafter referred to as Lessor, and **BROOKS FARMS**, hereinafter referred to as Lessee.

### WITNESSETH:

That said Lessor, for and in consideration of the rentals hereby reserved and the covenants and agreements herein set forth and contained on the part of Lessee to be kept and performed, has and does hereby lease and demise unto said Lessee that certain real property situated in Maricopa County, Arizona, (the "Property") and more particularly described in Exhibit "A" attached hereto.

TO HAVE AND TO HOLD said Property, together with all the improvements thereon for a term beginning January 1, 2002 and ending on December 31, 2004, subject to a reasonable extension for harvesting of crops.

1. Said Lessee, for an in consideration of said demise, hereby covenants and agrees with said Lessor as follows:

*Dec*  
HOWEVER FOR  
THE YEAR 2002  
THE LEASE RATE  
SHALL BE \$100<sup>00</sup>  
PER ACRE  
(\$15,292<sup>00</sup>)

- (a) To pay to Lessor as rental for the Property the sum of NINETEEN THOUSAND EIGHT HUNDRED EIGHTY AND 00/100THS DOLLARS (\$19,880.00) per year. Said rental fee shall be based on 152.92 acres at a rate of ONE HUNDRED THIRTY AND NO/100THS DOLLARS (\$130.00) per acre. Lessee agrees to pay said rental fee in semi-annual installments each year on January 1<sup>st</sup> and July 1<sup>st</sup>.
- (b) Lease agrees to pay before delinquent, any and all charges for electric energy and other utilities delivered to and used by Lessee upon the Property during the term herein specified, including all water costs and assessments by the Roosevelt Irrigation District. In addition, Lessee shall pay before delinquent any groundwater withdrawal fees applicable to the Property pursuant to the Groundwater Management Act of 1980.
- (c) Lessee shall promptly pay, before delinquent, all bills incurred for labor, equipment, seed, and fertilizer furnished, and all other expenses incurred by Lessee in his farming operations to the end that no lien be claimed against the Property on account of or by reason of the furnishing of items to Lessee.
- (d) Lessee shall not assign or sublet this Lease without prior written consent of Lessor, which written consent shall not be unreasonably withheld; any attempted assignment or sublease without the consent of Lessor required by the foregoing shall be null and void, and shall constitute, at Lessor's option, an immediate default hereunder.
- (e) Lessee shall further pay and all licenses, charges and other fees of every kind and nature, except real estate taxes and assessments, as and when they become due and before the same become delinquent, arising out of or in connection with Lessee's use and occupancy of the Property.

- (f) Except for crop financing loans and security documents filed in connection with such loans, Lessee agrees to keep the Property and all crops and improvements thereon free and clear of all liens and encumbrances arising in connection with the use of the Property.
- (g) Lessor agrees to pay, before delinquent, all real Property taxes, assessments and all other governmental liens and charges, general or special, on the Property.
- (h) Lessee shall, during the term of herein specified, cultivate and farm the Property in a good and farmerlike manner, and during said term keep the Property clear and free of all noxious weeds and grasses.
- (i) Lessor shall have the right, at all reasonable times, to enter upon the Property for the purpose of inspecting it, or for any other lawful purpose, not in conflict with Lessee's right to quiet enjoyment.
- (j) Except as herein otherwise provided to the contrary, Lessee agrees to keep and maintain the Property and all improvements thereon in as good condition and state of repair as the same shall be at the date hereof, acts of God and reasonable wear and tear excepted.
- (k) Lessee agrees, during the term of this Lease, to provide, pay for and maintain in full force and effect public liability and property damage insurance with coverage of not less than \$5,000,000 for bodily injury or death to any one person, \$5,000,000 for bodily injury or death of any number of persons in one occurrence and \$500,000 damage to property for the protection of Lessee and Lessor against liability which may or might arise in connection with the use, occupancy or ownership of or otherwise in connection with the property from any accident, occurrence or any injury or death to any person or persons, or damage to property of Lessee or other, with Lessor to be named as additional insured on said policy. Further, Lessee during the lease term, will insure the pumps, motors and pumping equipment on the property for their full replacement value and cause Lessor to be named as additional insured thereon.
- (l) Except as otherwise herein provided, Lessee agrees to indemnify and save harmless Lessor on demand from and against any and all claims, demands, losses, costs and expenses arising out of or in connection with the Property, during the term of this Lease, including attorneys' fees incurred in responding to or defending against any such claim or demand.
- (m) During the term of this Lease, Lessee shall provide, pay for, and maintain in full force and effect, casualty insurance with respect to all improvements on the Property, which insurance shall name Lessor and Lessee as co-insureds, and shall cover all improvements to the extent of 100% of the replacement cost thereof, and shall protect such improvements against fire, flood and other casualties customarily insured against.
- (n) At the end of the term herein specified, to deliver possession of the Property to Lessor in as good condition and state of repair, as the same shall be upon commencement of the term, acts of God and reasonable wear and tear excepted.

2. That said Lessor hereby covenants and agrees with said Lessee that said Lessee, on paying the rentals specified and on keeping and performing all the covenants and agreements herein set forth on Lessee's part to be kept and performed, shall and may peaceably and quietly have, hold and enjoy the Property during the term specified.
3. It is mutually understood and agreed by and between the parties hereto as follows:
  - (a) That in the event that either Lessor or Lessee shall necessarily bring any action against the other on account of any default in the performance of the covenants or agreements herein set forth and contained on the part of such other party to be kept and performed after defaulting party has been given thirty (30) day written notice to correct said default then the party against whom the judgment in such action shall be rendered shall promptly pay to the other party a reasonable attorneys' fee as determined by the judge of the court, and all costs and reasonable expenses actually and necessarily incurred by the prevailing party in such action.
  - (b) That in the event if (i) the appointment of a receiver to take possession of all or substantially all of the Property and assets of Lessee, (ii) that Lessee shall make a general assignment for the benefit of creditors, or (iii) that Lessee shall be adjudged bankrupt; then and in any of such events, the demise herein provided for shall, at the option of Lessor, be terminated and of no force or effect from and after such termination except that said Lessor shall have the right to collect any and all rents and any and all other sums due and payable by Lessee to Lessor under the provisions hereof until possession of the Property shall be restored or surrendered to Lessor.
  - (c) Should Lessee fail to pay rent or any other sums of money at the time the same are due as provided herein, which failure shall continue for a period of ten (10) days after written notice of said failure, or to keep or perform any of the term, covenants, or conditions herein contained, or otherwise be in default hereunder, which failure or default shall continue for a period of thirty (30) days after written notice from Lessor of such failure or such default, Lessor may, at Lessor's option re-enter said demised premises, take possession thereof, and terminate this Lease or may exercise any other remedy provided by law. Lessee agrees at the term hereof to peaceably yield possession of the Property in as good a condition and state of repair as at the commencement of the term, acts of God and reasonable wear and tear excepted.
  - (d) Lessor and Lessee mutually agree that in the event Lessor sells the Property or portions of the Property in a bona fide sale to a third party during the term of this Lease; then and in the event, Lessor shall have the right to terminate this Lease as to the Property sold by giving Lessee written notice of termination. In the event a termination notice is received by Lessee, at the time when a crop is not planted, Lessee shall have thirty (30) days to vacate the Property. In the event a termination notice is received by Lessee at a time when a crop is planted, Lessee shall be allowed to bring the crop to maturity, harvest the crop and then vacate the Property (in which event all items of this Lease shall apply until Lessee vacates the Property); provided, however that in the event the Lessor or the new owner of the Property desire to develop and construct structures on the Property, Lessee shall immediately (after the thirty (30) day written notice) vacate that portion to be developed, but may bring to maturity and

harvest that portion not being developed and then vacate the Property. Lessor shall compensate Lessee for its reasonable costs arising from planting, tillage and hedging associated with the Property that is being developed and vacated by Lessee pursuant hereto. These losses shall be computed including all reasonable costs of producing the crop on the terminated acreage up to that date. In the event Lessee has planted an alfalfa crop or any other crop which has a growing season that exceeds one year, the maximum loss payable by Lessor to Lessee as set forth above will be \$50 per acre.

- (e) Lessee acknowledges that Lessor has made no warranty or representation written or oral, concerning the condition of the Property including the availability of water. Lessee agrees to enter into this Lease with the understanding that it assumes all risks of the Party's condition.
- (f) Lessee covenants and agrees to observe all laws, rules and regulations of the federal, state and county governments and any subdivisions and agencies thereof in connection with Lessee's use of the Property.
- (g) If the whole of the Property, or such portion of it as will make the Property unsuitable for the purposes for which it is leased, is condemned for any public use or purpose by legally constituted authority or it taken by agreement in lieu of condemnation, then in either of such events, this Lease shall cease from the time when possession is taken by such public authority and rental shall be accounted for between Lessor and Lessee as of the date of the surrender of possession. It is agreed that in the event of any condemnation or eminent domain proceedings that Lessee shall be entitled only to any separate award that Lessee may obtain for loss of existing crops being grown on the land at the time. Except for any award for crops, all other awards resulting from condemnation or eminent domain proceedings or any portion thereof, shall belong to Lessor and hereby are assigned to Lessor by Lessee, it being acknowledged by Lessee that Lessee has no rights therein.
- (h) Lessee agrees to pay regular and ordinary water assessments during the term of this Lease and will pay for any additional water used.
- (i) Any and all notices to be given by this Lease shall be in writing, sent registered mail, no return receipt required, and shall be deemed given upon depositing postage prepaid, in a United States mail receptacle. Notice given to Lessor shall be addressed to Lessor at:

4730 East Indian School Road #120-260  
Phoenix, Arizona 85018

And notice to Lessee shall be addressed to Lessee at:

3900 North Citrus Road  
Goodyear, AZ 85338


Either party may change such address from time to time by giving notice in writing to the other of such change.

- (j) Lessee agrees at its expense to repair and make replacements to the irrigation pumps and all component parts thereof above and below the ground whenever required by Lessee. Also, if required by Lessee, all well deepening and all costs in connection therewith will be at the expense of Lessee.
4. The provisions of this Lease shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.
5. Upon any casualty which shall damage or destroy the Property, or render the same untenable or unfit for occupancy, the parties agree that Lessee's obligation hereunder, including the obligation to pay rent, shall not abate, and this Lease shall remain in full force and effect. The parties agree that Lessee shall have no right to terminate this Lease under A.R.S. Section 33-343 or otherwise upon such casualty.
6. Under the provision of the Uniform Commercial Code as adopted in Arizona, Lessee hereby grants to Lessor a security interest in the crops growing, or to be planted or grown during the term of this Lease on the Property. The foregoing security interest is given to secure Lessee's performance of its obligations hereunder. Lessee warrants that he is the owner of the subject of such security interest, free and clear of all liens and encumbrances other than those previously disclosed to Lessor. Lessee shall keep the Property, the subject of such security interest in good condition and free and clear of all liens and encumbrances except those which shall be approved in writing by Lessor. Lessee hereby appoints Lessor his attorney-in-fact to take all action appropriate to protect or continue perfected such security interest. Upon any default hereunder, Lessor shall be entitled to the rights of a secured party under the laws of the State of Arizona, including the right to take possession of and sell the property the subject of such security interest.
7. Lessee agrees to take all action necessary to properly manage, operate, and maintain the property in good order and condition and in conformance with the highest standards of the surrounding farming community. Lessee agrees to keep the property free from contamination of hazardous substances of any nature whatsoever and in any quantity, and free from material concentrations of any pesticides. Lessee shall comply with all applicable federal, state or local laws and regulations, including but not limited to environmental laws and regulations, which may be in force during the term of this Lease. To the extent Lessee causes the contamination, Lessee further agrees to take all action reasonable required to remedy any contamination or to make his actions and the property comply with all applicable federal, state or local laws and regulations, to the reasonable satisfaction of Lessor. The cost of such remedy shall be borne by Lessee. Any obligations or liabilities arising out of the terms of this section shall survive the termination of this Lease.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above mentioned.

LESSOR:

SARIVAL 155 LIMITED LIABILITY,  
LIMITED PARTNERSHIP,  
An Arizona Limited Liability Limited  
Partnership

By   
Richard Wilson  
Authorized Agent

LESSEE:

BROOKS FARMS

By   
Michael Brooks

11:58 FAX 602 957 4385

FATCO CAMELBACK COMM'L

0005/012

**EXHIBIT "A"****NO. 226-263-1181936****PARCEL NO. 1:**

Lots 1 and 2 (also known as the West half of the Northwest quarter) and the East half of the Northwest quarter of Section 18, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT that part described as follows:

BEGINNING at a point 1,498 feet East of the West quarter corner of said Section 18, said point being on the East and West mid-section line;

thence North 50 feet;

thence East 60 feet;

thence South 50 feet to a point on said mid-section line;

thence West along said mid-section line, 60 feet to the POINT OF BEGINNING; and

EXCEPT that part described as follows:

COMMENCING at a cotton picker spindle set in the North line of said Section 18, distant thereon Easterly 1820.22 feet from the Northwest corner thereof;

thence South 00 degrees 51 minutes 20 seconds East, 1299.76 feet and South 89 degrees 08 minutes 40 seconds West, 25.00 feet to a set 1/2 inch rebar and the POINT OF BEGINNING of this parcel;

thence South 89 degrees 31 minutes 24 seconds West, 242.00 feet to a set 1/2 inch rebar;

thence North 00 degrees 51 minutes 20 seconds West, 180.00 feet to a set 1/2 inch rebar;

thence North 89 degrees 31 minutes 24 seconds East, 242.00 feet to a set 1/2 inch rebar;

thence South 00 degrees 51 minutes 20 seconds East, 180.00 feet to the POINT OF BEGINNING.

**PARCEL NO. 2:**

That part of the East half of the Northwest quarter of Section 18, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:



11:59 FAX 602 957 4385

FATCO CAMELBACK COMM'L

0008/012

**EXHIBIT "A"****NO. 226-263-1181936**

**COMMENCING** at a cotton picker spindle set in the North line of said Section 18, distant thereon Easterly 1820.22 feet from the Northwest corner thereof;

thence South 00 degrees 51 minutes 20 seconds East, 1299.76 feet and South 89 degrees 08 minutes 40 seconds West, 25.00 feet to a set 1/2 inch rebar and the **POINT OF BEGINNING** of this parcel;

thence South 89 degrees 31 minutes 24 seconds West, 242.00 feet to a set 1/2 inch rebar;

thence North 00 degrees 51 minutes 20 seconds West, 180.00 feet to a set 1/2 inch rebar;

thence North 89 degrees 31 minutes 24 seconds East, 242.00 feet to a set 1/2 inch rebar;

thence South 00 degrees 51 minutes 20 seconds East, 180.00 feet to the **POINT OF BEGINNING**.